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January 9, 2023

Via ECF

Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

MOTION FOR REMAND AND COSTS

**Re: BOUROUIS v. NATIONAL RAILROAD CORP., NATIONAL RAILROAD
PASSENGER CORPORATION and JOSE GONZALEZ**

Docket No. 1:22-cv-07661-BMC

Dear Hon. Brian M. Cogan:

Plaintiff, Said Bourouis ("Bourouis"), by his Attorneys Newman, Anzalone & Newman, LLP., submit this letter motion seeking remand of this action to New York State Supreme Court, Queens County.

The action arises out of a motor vehicle accident on May 29, 2021. Plaintiff, Bourouis, was driving near the intersection of Fresh Pond Road and Metropolitan Avenue in Queens, New York, when he was struck by a vehicle operated by Jose Gonzalez and owned by National Railroad Corp.

The New York City Police Accident report documents that the operator of vehicle 1 defendant, Jose Gonzalez, stated "he was attempting to stop at location but slid due to the rain and wet pavement causing him to strike vehicle 2". Gonzalez's residence is reported to be Queens County, NY. A copy of the New York City Police Accident report is attached.

Bourouis initiated this action in New York Supreme Court, Queens County. Venue was based on plaintiff's residence in Queens County, NY.

Plaintiff's complaint alleges that the defendant operated his motor vehicle in a dangerous and careless manner and seeks recovery for non-economic loss as set forth in section 5102(a) of the New York Insurance Law.

On December 16, 2022 defendants removed the action to the United States District Court Eastern District of New York based on federal question jurisdiction.

I. REMAND

Federal jurisdiction is available only when a federal question is presented, 28 U.S.C. § 1331, or when the plaintiff and defendant are of diverse citizenship and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. A case may be removed from state court to federal court only if it could have originally been commenced in federal court on either the basis of federal question or diversity jurisdiction. *Citibank, N.A. v. Swiatkoski*, 395 F.Supp.2d 5, 8 (E.D.N.Y.2005) (citing 28 U.S.C. § 1441(a)). In making this determination, courts are permitted to look to materials outside the pleadings, “includ[ing] documents appended to a notice of removal or a motion to remand that convey information essential to the court’s jurisdictional analysis.” *Romano v. Kazacos*, 609 F.3d 512, 520 (2d Cir.2010). Federal question jurisdiction exists when the plaintiff raises claims under federal law. Removal is “strictly construed” and the removing party bears the burden of establishing removal is proper. If a federal court determines that it lacks subject matter jurisdiction over the removed case, the case must be remanded. 28 U.S.C. § 1447(c). Removal statutes are to be strictly construed, and any doubts are to be resolved in favor of remand. See *Beatie & Osborn LLP v. Patriot Scientific Corp.*, 431 F.Supp.2d 367, 38283 (S.D.N.Y.2006); *Codapro Corp. v. Wilson*, 997 F.Supp. 322, 324–25 (E.D.N.Y.1998). The burden of showing the proper exercise of jurisdiction by the removal court rests with the party seeking removal. See *Cal. Pub. Emps. Ret. Sys. v. WorldCom, Inc.*, 368 F.3d 86, 100 (2d Cir.2004); *Grimo v. Blue Cross/Blue Shield of Vt.*, 34 F.3d 148, 151 (2d Cir.1994). *Schulman v MyWebGrocer, Inc.*, 14-CV-7252 ENV RML, 2015 WL 3447224, at *1 [EDNY May 28, 2015]

A copy of the plaintiff’s complaint is annexed to defendants’ removal. The complaint does not raise claims under federal law and plaintiff respectfully requests that this matter be remanded to State Court.

II. COST, EXPENSES AND FEES

Bourouis requests costs and actual expenses, including attorney’s fees pursuant to 28 U.S.C. § 1447(c), which provides “[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” See *Certain Underwriters at Lloyd’s London v. Art Crating, Inc.*, No 12–CV–5078, 2014 WL 123488, at *2 (E.D.N.Y. Jan.10, 2014). A determination of whether an award of attorney’s fees is warranted turns on whether or not a defendant had an “objectively reasonable basis” for the subject removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132,136, 141 (2005). *Schulman v MyWebGrocer, Inc.*, 14-CV-7252 ENV RML, 2015 WL 3447224, at *3 [EDNY May 28, 2015]

Here, Defendants have not set forth the basis for removal and have no objective reasonable basis for removal.

Respectfully submitted,



Newman, Anzalone & Newman, LLP.
By: Gregory S. Newman, Esq. (GN4547)

cc:
Via ECF
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Page 1 of 2 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT (NYC)
 MV-104AN (7/11)

Report Number: **104**
 Accident No: **NY-2021-104-000850**
 Complaint Number: **AMENDED REPORT**

1. Date of Report: **5/29/2021** Day of Week: **SATURDAY** Hour: **04:30** No. of Vehicles: **2** Injured: **0** Killed: **0** Not Investigated at Scene: ☐ Left Scene: ☐ Police Working: ☒

2. Vehicle 1 Driver: **618322918** State of Reg: **NY** License ID Number: **300764957** State of Reg: **NY**
 Driver Name: **GONZALEZ, JOSE** Driver Name: **BOUROUIS, SAID**
 Address (House Number & Street): **68-15 64 PLACE** Address (House Number & Street): **63-37 AUSTIN STREET**
 City or Town: **QUEENS** State: **NY** Zip Code: **11374** City or Town: **QUEENS** State: **NY** Zip Code: **11374**

3. Date of Birth: **5/8/1976** Sex: **M** No. of Occupants: **1** Date of Birth: **6/3/1988** Sex: **M** No. of Occupants: **1**
 Name (as printed on registration): **NATIONAL RAIL ROAD CORP** Name (as printed on registration): **BOUROUIS, SAID**
 Address (House Number & Street): **MG6850G** Address (House Number & Street): **63-37 AUSTIN STREET**
 City or Town: **PA** State: **PA** Zip Code: **25682** City or Town: **QUEENS** State: **NY** Zip Code: **11374**

4. Vehicle Year & Make: **2013 CHEVROLET** Vehicle Type: **SW/SUV** VIN Code: **25682** Year & Make: **2014 INFINITI** Vehicle Type: **SW/SUV** VIN Code: **325**

5. Check if involved vehicle is:
 a. more than 95 inches wide ☐
 b. more than 34 feet long ☐
 c. operated with an overweight permit ☐
 d. operated with an overdimension permit ☐
 e. operated with an overdimension permit ☐

6. Check if involved vehicle is:
 a. more than 95 inches wide ☐
 b. more than 34 feet long ☐
 c. operated with an overweight permit ☐
 d. operated with an overdimension permit ☐
 e. operated with an overdimension permit ☐

7. Describe the diagram below that describes the accident or draw your own diagram in space #9. Number the vehicles.

8. Vehicle 1 Damage Codes: Box 1: Point of Impact: **2** Box 2: Most Damage: **2**
 Enter up to three more Damage Codes: **1 3 2**

9. Vehicle 2 Damage Codes: Box 1: Point of Impact: **10** Box 2: Most Damage: **10**
 Enter up to three more Damage Codes: **9 4 5**

10. Accident Diagram: **4 RIGHT ANGLE**

11. Vehicle Damage Coding:
 14. UNDERCARRIAGE 17. DEMOLISHED
 15. TRAILER 18. NO DAMAGE
 16. OVERTURNED 19. OTHER

12. Place Where Accident Occurred: ☐ BRONX ☐ KINGS ☐ NEW YORK ☒ QUEENS ☐ RICHMOND
 Road on which accident occurred: **FRESH POND ROAD**
 at (1) Intersecting Street: **METROPOLITAN AVENUE**
 at (2) **8 N 8 S** **8 E 8 W**

13. Accident Description/Officer's Notes: **AT TPO DRIVER OF VEHICLE 1 STATES HE WAS ATTEMPTING TO STOP AT LOCATION BUT SLID DUE TO THE RAIN AND WET PAVEMENT CAUSING HIM TO STRIKE VEHICLE 2 CAUSING DAMAGE. DRIVER OF VEHICLE 2 STATES HE WAS DRIVING STRAIGHT AT LOCATION WHEN HE SUDDENLY STRUCK BY VEHICLE 1 CAUSING DAMAGE. NO INJURIES. PD DID NOT OBSERVE INCIDENT**

14. Name of all involved: **GONZALEZ, JOSE** Date of Death: Only
BOUROUIS, SAID

15. Officer's Name: **ANDREW R HEINLEIN** Date of Report: **05/29/2021 11:19**

16. Officer's No: **966100** NOIC No: **03030** Precinct: **104** Reviewing Officer: **SGT EDWARD T REIMAN**

PERSONS KILLED OR INJURED IN ACCIDENT (Letter designation of persons killed or injured must correspond with letter designation on front)

Last Name		First		M.I.		Last Name		First		M.I.	
Address						Address					
Date of Birth		Month		Day		Year		Telephone (Area Code)		()	
Last Name		First		M.I.		Last Name		First		M.I.	
Address						Address					
Date of Birth		Month		Day		Year		Telephone (Area Code)		()	
Last Name		First		M.I.		Last Name		First		M.I.	
Address						Address					
Date of Birth		Month		Day		Year		Telephone (Area Code)		()	
Last Name		First		M.I.		Last Name		First		M.I.	
Address						Address					
Date of Birth		Month		Day		Year		Telephone (Area Code)		()	
Last Name		First		M.I.		Last Name		First		M.I.	
Address						Address					
Date of Birth						Date of Birth					
Month						Month					
Day						Day					
Year						Year					
Telephone (Area Code)						Telephone (Area Code)					
()						()					
Highway Dist. at Scene?						<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Name						Name					
Shield No.						Shield No.					

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1: HC2ECAP477M052614 Vehicle No. 2: 6092488172031

Expiration Date 02/01/2022 Expiration Date 11/10/2021

VIN 5N1AL0MM9EC511782

WITNESS (Attach separate sheet, if necessary)

Name	Address	Phone

DUPLICATE COPY REQUIRED FOR:

- ☐ Dept. of Motor Vehicles (if anyone is killed/injured)
 ☐ Motor Transport Division (P.D. vehicle involved)
 ☐ NYC Taxi & Limousine Comm. (if a Licensed taxi or limousine involved)
 ☐ Other City Agency (Specify)
- ☐ Office of Comptroller (if a City vehicle involved)
 ☐ Personnel Safety Unit (if a P.D. vehicle involved)
 ☐ Highway Unit



NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who was notified. In either case, give date and time of notification.)




PROPERTY DAMAGED (other than vehicles)**OWNER OF PROPERTY (include city agency, where applicable)****IF NYPD VEHICLE IS INVOLVED:**

Police Vehicle	Operator's First Name		Last Name		Rank	Shield No.	Tax ID. No.	Command
Make of Vehicle	Year	Type of Vehicle	Plate No.		Dept. Vehicle No.	Assigned to What Command		
Equipment in Use At Time of Accident								
<input type="checkbox"/> Siren <input type="checkbox"/> Horn <input type="checkbox"/> Turned Light <input type="checkbox"/> 4-Way Flasher <input type="checkbox"/> High-Level Warning Lights <input type="checkbox"/> Traffic Cones <input type="checkbox"/> Headlights								

ACTIONS OF POLICE VEHICLE

- ☐ Responding to Code Signal
 ☐ Complying with Station House Directive
- ☐ Pursuing Violator
 ☐ Routine Patrol
- ☐ Other (Describe)

10:40  

  25% 



2021-05-29 police r...



Right Angle - MV-2021-104-050650

Reporting Officer: POM ANDREW R HEINLEIN

Reviewing Officer: SGT EDWARD T REIMAN Reviewed Date: 05/29/2021 11:19

